

STRAITS SETTLEMENTS REPORTS.

PUBLISHED BY AUTHORITY

[COURT OF APPEAL]

TERRELL, Ag. C.J. (F.M.S.) & AITKEN, J.A.

May 15, 1941.

A. C. WILLIS

v.

I.M.N. WILLIS & E. H. HODGSON.

[CIVIL APPEAL No. 1 of 1941]

Colonial Divorce Jurisdiction Acts 1926, s. 1, sub-s. 1—Colonial Divorce Jurisdiction Acts 1940, s. 5—Straits Settlements Divorce Jurisdiction Order in Council 1936—"the place where the parties last resided together".

A married couple may have resided together in e.g. Singapore for the purpose of the Straits Settlements Divorce Jurisdiction Order in Council 1936 even though they have never had a matrimonial home there. Even if they have lived in hotels, rest houses, boarding houses, other peoples' houses or even in different houses, provided they have lived a normal married life together, so far as circumstances permitted, and in the same place, and for a reasonable period of time, they should be held to have "resided together" at that place as husband and wife so as to have satisfied the conditions of the Colonial Divorce Jurisdiction acts of 1926 and 1940.

Cases referred to:—

- (1) *Rex v. The Inhabitants of Norwood* 2 Q. B. 457.
- (2) *The Tewkesbury Case* 135 E.R. 1, 5.
- (3) *Wright v. Wright* I.L.R. 36 Cal. 964.
- (4) *Ritchson v. Ritchson* A.I.R. 1934 Cal. 574.
- (5) *Rex v. The Inhabitants of North Curry* 4 B.&C. 952, 959.
- (6) *Ex parte Breull, In re Bowie* 16 Ch. D. 484.
- (7) *Naif v. Mutter* 31 L.J.C.P. 357.
- (8) *Reg. v. Justices of Tyrone* (1901) 2 Ir. 510.
- (9) *Murphy v. Murphy* A.I.R. 44 Bom. 547.

APPEAL.

Withers Payne for appellant.*A. J. Braga* for respondent.*De Souza* for co-respondent.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Terrell, Ag. C.J. (F.M.S.)—This is an appeal from the decision of the learned Chief Justice rejecting the petition on the ground that the Court had no jurisdiction, under the provisions of the Indian and Colonial Divorce Jurisdiction Acts 1926 and 1940, to entertain the petition. The learned Chief Justice having heard all the witnesses, expressed the opinion that but for the want of jurisdiction the petitioner would have been entitled to a decree nisi. The appeal is by the petitioner, and as there is no cross-appeal by the respondent or the co-respondent, the findings of the Court below must be accepted, and the only matter for the consideration of the appellate Court is the short point of jurisdiction.

Sec. 1, sub-s. 1 *proviso* (c) of the Act as amended and with the necessary adaptations contemplated by s. 5 of the 1940 Act as implemented by the Straits Settlements Divorce Jurisdiction Order in Council 1936, reads as follows:—

"No such Court shall grant any relief under this Act except in cases where....the places where the parties last resided together was in the Straits Settlements."

The facts as set out in the judgment in the Court below are that the petitioner and the respondent are domiciled in England. They were married in Shanghai in 1926. The petitioner came to Singapore in 1930, and has been living at the Seamen's Institute in Singapore since 1930. In February 1939 the respondent, who had been living in Shanghai, came to Singapore in response to a letter which she received from the co-respondent with whom she had been friendly in Shanghai and who was then in Singapore. The respondent never lived with the petitioner at the Seamen's Institute. It is doubtful whether she could have lived with him there. Certainly there was insufficient accommodation for the adopted daughter Tessie, a girl of 17½ who also arrived from Shanghai in March 1939. Accordingly the petitioner made other arrangements for the respondent's lodging and keep. At first she lived in a boarding house. The following month she took a small house in Institution Hill. The petitioner paid the rent and paid for her maintenance. The learned Chief Justice says later in his judgment:—

"A reconciliation was effected between husband and wife, and for a time they lived on friendly relations, and what I might call a normal married life, except that they lived in separate houses, an arrangement which I think was necessitated from the arrival of the respondent's adopted daughter in March 1939, as the petitioner's quarters in the Seamen's Institute were not very ample. At any rate although Mrs. Willis would have preferred to live with her husband, she acquiesced in the arrangement about having separate establishments."

These are really the only facts which need be considered for the purpose of this appeal. It should be mentioned that during the hearing of the petition no objection to the jurisdiction was raised by either party, and that it was only after the conclusion of all the evidence that the point was suggested by the learned Chief Justice himself, and was subsequently argued before him.

I do not think that the English authorities cited by Dr. Withers Payne have very much relevance. The case relied on by the learned Chief Justice was *Rex v. The Inhabitants of Norwood*⁽¹⁾. That was a case to determine the liability of a parish under the Poor Law Acts. The Court was considering Statutes under which a man could only have one 'residence' or 'settlement'. Under other Acts, e.g. for example Acts dealing with Parliamentary votes, a man may have more than one residence, and if he maintains a residence for his family and servants, he may be entitled to vote even though he never sleeps there at all (see the *Tewkesbury case*⁽²⁾).

The point which arises in the present case is not whether the husband had one or more residences in Singapore, but whether husband and wife 'resided together' in Singapore. The Indian authorities under the Acts which are now being considered are likewise of little assistance. The points which were discussed in *Wright v. Wright*⁽³⁾ and in *Ritchson v. Ritchson*⁽⁴⁾ were what 'residence' was sufficient to give the Court jurisdiction. In the first case a fortnight's residence in an hotel, and in the second a short stay in the house of the wife's parents were held to be sufficient. The question now before the Court was not touched on. All that can be derived from these authorities is that the Court considered that the main purpose of the Acts was to give relief to persons domiciled in England but resident in British India, and gave a liberal interpretation to the word 'residing' so as not to defeat the general purpose of the legislation.

Petitioner's counsel has, in my opinion, quite correctly stressed the general objects of the Acts, which can be gathered from the Acts themselves, as assisting the construction for which he is contending. But the solution is to a certain extent metaphysical. It involves the distinction between the 'objective' and the 'subjective'. Objectively the husband and wife had separate and distinct residences, as distinct as if they had merely been acquaintances who met occasionally. But under English principles of law the objective explanation is by no means always

conclusive. Killing is an objective fact, but it is not necessarily murder; the intention is an essential part of the crime, and must be established by the prosecution. So again in matters of domicile. A man may have lived for thirty years in the Straits Settlements. Objectively he has been resident there for the greater part of his life; but that is by no means conclusive on the question of his domicile. It must be established that he had the *animus manendi*, so as to rebut the presumption of the *animus revertendi*. In other words, his residence even after a long and uninterrupted period of years must be considered subjectively, and not objectively.

Applying those principles to the facts of the present case, it appears to me to be inadmissible to assume that merely because the husband and wife were in fact occupying separate dwelling places in Singapore that they were not 'residing together' for the purpose of the Acts. The fact of separate residences is of course relevant to the inquiry, and if it could have been proved that marital relations had been broken off years before, and had never been restored, and that they were in effect two separate people happening to live in the same town, but living apart and absolutely independent of one another—proof of such a state of affairs would have been conclusive that they were not residing together.

But these are not the facts of the case now before the Court. As stated above, the learned Chief Justice has found that they lived a normal married life except that they lived in separate homes, a circumstance which had no relation to their married life, but was necessitated by the occupation from which the husband made his living. The rent of the house when the wife lived in Institution Hill was paid by the husband, and he maintained her. In those circumstances there was definitely no severance of the marital relation; objectively they lived in separate establishments, but subjectively, as man and wife, they resided together in Singapore.

In my opinion, therefore, the appeal should be allowed and a decree nisi granted in favour of the petitioner, such decree not to be made absolute until after the expiration of six months from the 6th of May 1941, the date of the dismissal of the petition. There will be no order for damages. The costs of the petitioner and the respondent, both here and below, will be paid by the co-respondent. Unless the parties desire to be heard further as to costs at a later date, I would give the petitioner costs fixed at \$300 in the Court below and \$150 in the Court of Appeal, and

the respondent's costs at \$100 in the Court below and \$75 in the Court of Appeal.

Aitken, J.—In this appeal we have to decide whether the Settlement of Singapore is the place where the petitioner and the respondent last resided together within the meaning of that term as used in s. 1, sub-s. 1 proviso (c) of the Indian and Colonial Divorce Jurisdiction Act, 1926.

The facts upon which this question arises appear to be as follows:—

The parties were married at Shanghai on the 14th of May 1926. During such short periods as the petitioner, who was then a seafaring man, was on shore, they lived together at the house of the respondent's parents. The last time they were together in Shanghai was April, 1929. Then the petitioner sailed away, and eventually arrived at Singapore on some date in 1930.

On or shortly after his arrival here the petitioner obtained the post of steward in charge of the Seamen's Institute at Anson Road. By the terms of his employment he had to live at the Institute Building and sleep there, and he was only free to go where he liked one afternoon and one evening each week.

From 1930 up to date the petitioner has lived at this Seamen's Institute as the Steward in charge. I gathered that he had not been on good terms with the respondent when he left her at Shanghai in April or May 1929, and he seems to have been quite content that she should stay there. The respondent, on her part, seems to have learnt that the petitioner had settled down in Singapore, and to have tried to get into touch with him there. Her endeavours in that regard met with no success until the co-respondent came to Singapore, and discovered where the petitioner was living and what he was doing.

That occurred in the year 1938, and the co-respondent communicated what he had discovered about the petitioner to the respondent. The latter then decided to come to Singapore, and having cabled the petitioner, she arrived here on the 6th of February, 1939.

Upon her arrival here a reconciliation was effected between the parties, and next month they were joined by the respondent's daughter Tessie, who was then a girl of some 15½ years of age. The reconciliation was complete by the 12th of February, 1939, and from that date for about a year or so the parties lived on

friendly terms with one another and a normal life except that they lived in separate houses—an arrangement which the learned Chief Justice thinks was necessitated by the arrival of the respondent's adopted daughter. I myself entertain little doubt but that the petitioner's quarters at the Seamen's Institute in Anson Road was not a suitable residence for the respondent and her adopted daughter, even assuming that the Institute authorities would have allowed them to live there.

According to the petitioner's evidence, which is not questioned in any way on this point, "arrangements were made for my wife's lodging and upkeep. At first she went to live in a boarding house. The following month she took a small house at Institution Hill. I paid the rent and I paid her maintenance. I had to live at the Seamen's Institute. My wife would not live there with me. Arrangements were made for her to visit me by day."

These arrangements continued until February, 1940, when the respondent moved into a house in Orchard Road which she conducted as a guest house. I gather that the petitioner continued to pay her maintenance for some time after that date, but the co-respondent's frequent visits to the respondent at her guest house soon aroused the petitioner's suspicions, and he hereupon ceased to live anything like a normal married life with her.

The question we have to decide can therefore be narrowed down to this:—Did the parties "reside together" at Singapore during the period February, 1939 to February, 1940, within the meaning of that expression as used in s. 1, sub-s. 1 proviso (c) of the Indian and Colonial Divorce Jurisdiction Act, 1926?

The learned Chief Justice answered that question in the negative, and the material part of his judgment is as follows:—

"Under these circumstances did they (i.e. the parties) reside together within the meaning of the *proviso* which I have set out (i.e. *proviso* (c) of s. 1, sub-s. 1 of the Act)?

There was nothing in the nature of a separation agreement in the ordinary sense of the word, still less an order for judicial separation; but they did agree to live in totally different houses.

The word "reside" has been said to be a flexible or elastic word. "I take it that that word (*viž.* 'reside'), where there is nothing to show that it is used in a more extensive sense, denotes, the place where an

individual eats, drinks and sleeps or where his family or his servants eat, drink and sleep", *R. v. Inhabitants of North Curry*⁽⁵⁾.

The word must be construed in accordance with the object and intent of the Act in which it occurs. *Ex parte Breull, In re Bowie*⁽⁶⁾; *Naif v. Mutter*⁽⁷⁾; *Reg. v. Justices of Tyrone*⁽⁸⁾.

In the present case the word is used in connection with matrimonial relations, and I have no doubt the place where the parties reside together means the place where the matrimonial home is situated. In *R. v. Norwood*⁽¹⁾ (a case of Settlement under the Poor Law) the husband was surgeon in an asylum in the Parish of Norwood. He was supplied with board and lodging at the asylum, and as such house surgeon it was his duty and he was expected, to live at the asylum. He took apartments for his wife and children in the Parish of St. Pancras. He visited his wife there and frequently spent from Saturday to Monday with her. He slept there during the week before he was arrested. Blackburn, J. said:—

"I think the husband was resident in Norwood, and not in St. Pancras where his wife had lodgings. The real question in such a case as the present, in which the husband lives in one place and his wife and family in another, is, where was the husband, the head of the family, resident? *Prima facie*, no doubt a man's home is where his wife lives, and so he may be said to be resident there. But he may be, as in the present case, only a sojourner there, or an occasional though regular visitor. Now, in the present case the husband had been resident for years at the asylum and when he married he still slept there as before, but he took lodgings for his wife elsewhere, and for the last six years in St. Pancras, and did no doubt regularly visit her there. But was it his residence? I think not. The occasional, or even regular visiting at lodgings which he had taken for his wife is not enough to cause us to say that he had ceased to have his residence in Norwood. We must look at all the circumstances of the case taken together, and I think it is impossible to say that the husband did not reside in Norwood; and if so, he did not reside in St. Pancras."

I think it is unquestionable that the petitioner resided at the Seamen's Institute and that his wife did not reside there. I think it is equally unquestionable that he did not reside where his wife resided. He was even more tied down to the Seamen's Institute than the surgeon was in the asylum. He had just an afternoon and evening off once a week, and there is no evidence that he ever slept a night at his wife's house or that he kept any of his belongings there. He was not free to live in her house if he wanted to, and at the same time retain his employment at the Seamen's Institute.

I have no doubt to Willis and his wife 'home' meant an entirely different place. In my opinion they never had a matrimonial home in this Colony.

I think "reside together" means exactly what it says, and that Mr. and Mrs. Willis never resided together since he left Shanghai in 1929."

It is clear, I think, that the learned Chief Justice's reasoning is based on the view that a married couple cannot "reside together" in any place within the meaning of this *proviso* (c) unless they have a matrimonial home there.

I find myself unable to accept that view. The Indian and Colonial Divorce Jurisdiction Act, 1926, is a remedial statute intended to remedy the grave hardships involved in compelling English and Scottish people, resident in the Far East and certain other remote countries, whose marriages have ended in disaster, to sue for relief in the Courts of their domicile. Speaking generally this Act substitutes residence for domicile as the basis of jurisdiction in such cases, and being a remedial statute it should, in my opinion, be given a benevolent interpretation and one which will enable the local Courts to remedy as many as possible of the hardships which the Act was designed to prevent.

Looking at these words from that point of view it seems to me that "the place where the parties to the marriage last resided" means nothing more and nothing less than the place where those parties last lived together as husband and wife. The conditions of life for English and Scottish married couples in the Far East and other remote places are such that they may never be fortunate enough to enjoy anything remotely resembling a true matrimonial home. For long periods of time they may have to live apart because the husband's employment takes him to places where the wife cannot go, yet they live together as husband and wife whenever they can be physically together, though often enough in such places as hotels, boarding houses, rest houses, or the houses of friends or relations. I myself have a vivid recollection of an English couple in Northern Nigeria whose only 'matrimonial home' during their residence in that country was an engineer's coach on the Lagos to Kano railway. The incident has remained in my mind because of the lady's amazing pluck and endurance in the face of conditions which were scarcely less than appalling.

Surely it is not too much to assume that the Imperial Parliament knew something of the conditions of life in the Far East and other remote countries affecting those for whom they were legislating when

they passed this Act? If that assumption be granted, and I feel sure that it must be, then it seems to follow that the local Courts would be wrong in refusing to grant relief under the Act unless the parties before them can be shown to have "resided together" in what can properly be described as a matrimonial home. If the parties have lived together in the same place as husband and wife, why should they not be regarded as having "resided together" there even though they have lived in hotels, rest houses, boarding houses, other people's houses or even in different houses? Provided that they have lived a normal married life together, so far as circumstances permitted, and in the same place, and for a reasonable period of time, it seems to me that they should be held to have "resided together" at that place as husband and wife, and so to have satisfied the test which the Act applies.

Now in this particular case the petitioner appears to have done all he could for his wife on her arrival at Singapore in February, 1939. The circumstances of his employment prevented him from taking her to live with him at the Seamen's Institute, so first he took lodgings for her, and then a small house for her and the adopted daughter when the latter arrived. He gave her a monthly sum by way of maintenance and paid the rent for her. He appears to have visited her quite regularly on the rare occasions when he was off duty, and the learned Chief Justice has found, as a fact, that the parties lived a normal married life during that period February, 1939, to February, 1940.

In other words the parties lived together as husband and wife at Singapore, so far as circumstances allowed, for a period of approximately one year.

On those facts I do not think that any one would object to the local Court holding that they "resided together" at Singapore within the meaning of this *proviso* (c) during that period if only the Courts are entitled to give a wide and benevolent construction to that phrase. In my opinion, and for the reasons which I have already given, the Courts are not only entitled, but bound, to adopt that kind of construction; and I therefore concur with the learned President in holding that the decree of the 6th of May, 1941, should be set aside, and that the petitioner should be granted a *decree nisi* in its place.

Perhaps I should say a word or two about the English cases in which the expressions "reside" or "residence" have been considered and which were brought to our notice by the industry of learned counsel. As the learned Chief Justice remarked in his judgment, a word "must be construed in accordance with the

object and intent of the Act in which it occurs." For that reason I do not consider English cases on the meaning of the word "reside" in connection with pauper settlement, or qualifications of Municipal and Parliamentary electors, really helpful in the construction of divorce legislation. On the other hand I have found the cases cited to us on s. 3, sub-s. 1 of the Indian Divorce Act, 1869, where the phrase "last resided together" appears to have been used for the first time, distinctly helpful; and I am glad to see that the Courts in India, almost without exception, appear to have given a wide and benevolent construction to that phrase. That is particularly so in the cases of *Wright v. Wright*⁽³⁾, *Murphy v. Murphy*⁽⁹⁾, and *Ritchson v. Ritchson*⁽⁴⁾.

Appeal allowed.

Solicitors for appellant:—*Drew & Napier.*

Solicitors for respondent:—*A. J. Braga.*

Solicitors for co-respondent:—*A. J. Braga.*

[ORIGINAL CIVIL JURISDICTION]

McELWAINE, C.J. (S.S.), AITKEN, Ag. J.A. &
MANNING, J.

July 21, 1941.

IN RE S. FUNG, A SOLICITOR.

[SINGAPORE ORIGINATING SUMMONS

No. 99 of 1940]

Advocates and Solicitors Ordinance (Cap. 62)
Rules of etiquette—What amounts to professional misconduct of a solicitor.

If a solicitor does not keep his client's money intact and if he uses some of it for purposes which do not concern the client then there is a misappropriation at least for a time of at least part of the client's money even though later on the full amount due to the client is paid to him. This amounts to professional misconduct.

The Rules regulating the practice and etiquette of the Singapore Bar which have been made under S. 31 sub-s. 1 (a) of the Advocates and Solicitors Ordinance have the force of law. Those Rules require a practising Advocate and Solicitor to keep a client's moneys in a separate account with a Bank. A breach of this Rule amounts to improper conduct or practice on the part of the Advocate and Solicitor and will be punished as such.

Cases referred to:—

- (1) *In re Sparks* 17 C.B. 727.
- (2) *In re a Solicitor* 11 T.L.R. 168.
- (3) *Allinson v. General Council of Medical Education and Registration* (1894) 1 Q.B. 450.